State Tax Department of West Virginia

Charleston 25305

Emergency

JOHN D. ROCKEFELLER IV
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TAX COMMISSIONER

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DEPUTY COMMISSIONER

Telephone
(304)348-2501

FILED

PM 1:55

October 4, 1984

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, W. Va. 25305

Dear Mr. Manchin:

Pursuant to the provisions of Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, I hereby submit two (2) copies of Emergency Legislative Rules and Regulations promulgated by this Department relating to the listing of interests in natural resource properties on the returns provided by this Department, for purposes of appraising such property interests during the statewide reappraisal and establishing a previously assessed value for purposes of the 10-year phase-in authorized by W. Va. Const. art. X, § 1b, subsection D.

As required by W. Va. Code § 29A-3-15 (1982), fifteen (16) copies of these emergency rules and regulations will forthwith be delivered to the Legislative Rule Making Review Committee.

These emergency regulations take effect October 4, 1984.

Very truly yours,

Herschel H. Rose

Herschel H. Rose III
State Tax Commissioner

HHR/jmj

Attachment

EMERGENCY LEGISLATIVE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series IA
(1984)
Filed: October 4, 1984

Subject: Listing of interests in natural resources for purposes of the first statewide reappraisal as as required by W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-26.

THE STATE OF WEST VIRGINIA

Montani Semper Liberi

OFFICE OF THE SECRETARY OF STATE

A. JAMES MANCHIN

CHARLESTON 25305

THE STATE CAPITOL

ROBERT W. JACKSON
DEPUTY SECRETARY OF STATE
CORPORATE AFFAIRS

STATE REGISTER FILING

I, Herschel H. Rose III, Commissioner
Title or Position

State Tax Department, hereby submit to records in the State Register on 8 1/2 x 11" two (2) copies of

(x) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

( ) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

( ) findings and determinations;

( ) Emergency rules and regulations

( ) Legislative ( ) Procedural ( ) Interpetive regulations

( ) other - specify ____________________

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

This filing pertains to

CHAPTER 11 ARTICLE 1A SECTION 4, 5, & 2 of the West Virginia Code, 1931, as amended.

SERIES 1A, SECTION ________ PAGE NO. ________ of the Administrative Code.

October 4, 1984
Date Submitted

Herschel H Rose
Signature of Person Authorizing this Filing

State Tax Department
Leg. Reg. 11-1A
Series IA

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY LEGISLATIVE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series IA
(1984)

Subject: Listing of Interests in Natural Resources

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State Tax Department
Leg. Reg. 11-1A
Series IA

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

STATEMENT OF EMERGENCY

Whereas, W. Va. Code § 11-1A-4 (1983) requires that every person who owns property situated in this State on July 1, 1983, shall on or before December 1, 1983, prepare a return itemizing and describing such property, whether real or personal, and file such return with the assessor of the assessment district wherein such property was located, except those returns listing property of the public service commission businesses shall be filed with the State Tax Commissioner.

Whereas, W. Va. Code § 11-1A-4 (1983) requires that the form for this special one-time return be designed by the Tax Commissioner, and shall provide means for the orderly listing of all property not excepted from listing under the provisions of W. Va. Code 11-1A-4 (1983).

Whereas, W. Va. Code § 11-1A-4 (1983) requires that a similar return, itemizing and listing such property, be also made, at the same time, by every person holding, possessing or controlling real and personal property (tangible and intangible) as executor, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker or in any representative or fiduciary capacity.

Whereas, even though W. Va. Code § 11-1A-5 excepts from listing real property assessed and listed upon the land books of the county assessor for 1983 or 1984 taxes, it is not known whether all real property has been so assessed and listed.

Whereas, there is no statutory requirement that there be recorded all leases entered into for the purposes of exploration, development, exploitation or removal from the surface or from below the surface of the ground coal, oil and gas, minor minerals or other natural resources.

Whereas, W. Va. Code § 11-1A-8 (1983) requires that the property required to be described and listed pursuant to W. Va. Code § 11-1A-4 (1983) and the real property entered on land books for the 1983 and 1984 tax years, be categorized and systematically inventoried for the express purpose of ascertaining what the previously assessed value for each item was or would have been as of July 1, 1983, such being done in accordance with guidelines, standards and procedures specified by the Tax Commissioner and entered into a statewide data bank established by the Tax Commissioner for such purposes.

Whereas the Tax Commissioner has entered into a contract with a private concern for the purpose of designing and developing the statewide data processing system network with such network forecast to be operational by on or before October 15, 1984.

Whereas, W. Va. Code § 11-1A-23 (1983) specifies that property tax returns and return information filed or supplied pursuant to articles 1A, 3, 4, 5, or 6, Chapter 11 of the West Virginia Code, "shall be confidential and except as authorized by this section, no officer or employee of the state tax department, county assessors, county commissions and the board of public works shall disclose any return or return information obtained by him ... in any matter in connection with his service as such an officer, member or employee...", excepted from this confidentiality provision is the itemized description of property listed pursuant to W. Va. Code §§ 11-1A-4, 11-1A-6 and 11-1A-26. This exception is to allow any person to ascertain that all property subject to assessment has been subject to appraisal during the first statewide reappraisal.

Whereas, W. Va. Code §§ 11-3-10 and 11-1A-26 provide penalties for refusal to answer or to falsely answer any question asked by the Tax Commissioner when such question or questions relate to the listing of real estate for the purpose of taxation.

Whereas, it is imperative that in order for the statewide reappraisal to be complete, the Tax Commissioner must ask questions to assure that all natural resources, including leases to provide for the extraction of same, be listed on the return to be filed.

Whereas, the return form upon which is to be listed the interest owned or leased in natural resources is to be sent on or before October 15, 1984, to all propsective taxpayers by the Tax Commissioner and the return is to be returned directly to the Tax Commissioner on or before December 15, 1984.

Whereas, the Tax Commissioner determined that an emergency exists requiring immediate promulgation of legislative regulations pertaining to the appraisal listing return in order to comply with the time limitations prescribed by W. Va. Code § 11-1A-4, and to prevent substantial harm to the public interest.

Wherefore, the Tax Commissioner determined that it was and is in the best interest of persons owning, holding, possessing or controlling interests in real property and the natural resources located therein and of this State for the following emergency regulations to be filed in the State Register, in order that the provisions thereof become effective immediately upon filing, as provided in W. Va. Code 29A-3-15, so that the Tax Commissioner may promulgate regulations on: property to be listed upon the appraisal return; to whom and by when the return is to be sent, and to whom and by when the return is to be returned; confidentiality of appraisal returns and the safekeeping measures to be utilized in protesting that confidentiality; application of the forfeiture penalty and other penalties provided by law for failing to file an appraisal return or for failure to file a complete appraisal return; and on other problems identified in this Statement of Emergency, in order to preserve and protect the integrity of the statewide reappraisal and the public's confidence therein which are essential to obtaining equal and uniform appraisal of the natural resources located in or under the real property in this State.

State Tax Department
Leg. Reg. 11-1A
Series IA

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SECRETARY OF STATE

EMERGENCY LEGISLATIVE
WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series IA
(1984)

Filed: October 4, 1984

Subject: Listing of interests in natural resources for purposes of the first statewide reappraisal as required by W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-26.

Section 1. General

1.01 Type of Regulations. -- These emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

1.02 Scope. -- These emergency legislative regulations provide for the listing of interests in natural resources located under the surface, such listing to be on the return issued by the Tax Commissioner.

1.03 Authority. -- These emergency legislative regulations are issued under the authority of W. Va. Code §§ 11-1A-1(f) and 29A-3-15.

1.04 Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on October 4, 1984.

1.05 Effective Date. -- These emergency legislative regulations take effect immediately upon their filing in the State Register, and are effective for a period of 180 days thereafter. Their life my be extended for a period of an additional 180 days upon compliance with the provisions of W. Va. Code § 29A-3-15.

1.06 Citation. -- These emergency legislative regulations may be cited as: W. Va. Emeg. Leg. Reg 11-1A, Series IA, § _____, page _____ (1984).

Section 4. Identification of Property to be Appraised; Persons Required to Make Returns.

4.01 General. -- The form designed or designated and provided by the Tax Commissioner shall be utilized for the orderly listing of all freehold interests in subsurface natural resources in West Virginia for the purpose of the first statewide reappraisal.

4.02 Definitions. -- For the purpose of article 1A, chapter 11 of the West Virginia Code, the following terms shall have the meaning ascribed herein unless the context in which the term is used clearly requires another meaning.

A. "Person" means and includes individuals as well as corporations, societies, associations and partnerships. *See* W. Va. Code § 2-2-10(i) (1973) defining generally terms used in the West Virginia Code.

B. "Subsurface natural resources" means both known deposits of coal, oil, natural gas and minor minerals located below the surface of the earth and those deposits for which mining and/or drilling permits have been obtained.

C. "Tax Commissioner" is the State Tax Commissioner of West Virginia and the mailing address for the Tax Commissioner's office is P.O. Box 2389 Charleston, WV 25328.

4.03 Due Date of Return. -- On or before October 15, 1984, the Tax Commissioner shall mail to all prospective taxpayers the tax return to be utilized for the listing of freehold interests in all real property having subsurface natural resources. Every person who on July 1, 1983, owned, held, possessed or controlled a freehold interest in real property containing subsurface natural resources shall prepare and file on or before December 15, 1984, the return itemizing and describing such property. If required by the Tax Commissioner, a supplemental appraisal return shall be filed within thirty days after written demand therefore is mailed, postage prepaid to the last known address of the person who owned, held, possessed or controlled a freehold interest in the above stated property. All returns required by this section to be filed shall be filed directly with the Tax Commissioner.

4.04 Persons Required to File Return.

A. The return required is a written list of questions which the Tax Commissioner may ask of taxpayers under the authority of W. Va. Code § 11-3-10 (1983) and which is described in the foregoing section 4.03 shall be filed by every person who on July 1, 1984, owned a freehold interest in subsurface natural resources, such persons among other means being determined as those who as of July 1, 1983, had applied for or had been granted mining and/or drilling permits through the Department of Natural Resources or the Department of Mines. Additionally, the return shall be filed by every person who held, possessed or controlled a freehold interest in subsurface natural resources on July 1, 1983, as:

1. executor;
2. administrator;
3. guardian;
4. trustee;
5. receiver;
6. agent;

7. partner;
8. attorney;
9. president or accounting officer of a corporation;
10. consignee;
11. broker; or
12. any other person who holds, possesses or controls such an interest in any representative or fiduciary capacity.

B. The return required by the Tax Commissioner under the authority of W. Va. Code § 11-3-10 (1983) and described in the foregoing section 4.03 shall be made and the information furnished:

1. With respect to an individual who is deceased, by his or her executor, administrator or other person charged with the property of such decedent;
2. With respect to a person under a disability who is unable to make a return, by a duly authorized agent, committee, guardian, fiduciary or other person charged with the care of the person or property of such individual:

Provided, that this subdivision shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of such an individual;

3. With respect to a case where a receiver, trustee in bankruptcy, or assignee by order of a court of competent jurisdiction, by operation of law or otherwise in possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return for such corporation in the same manner and form as corporations are required to make such returns;

4. With respect to property of an estate or a trust, the return shall be made by the fiduciary thereof; and

5. With respect to property of a married person who is absent from the State, the return shall be made by his or her spouse.

Section 25. -- Failure To List Property, Etc.; Collection of Penalties and Forfeitures

25.01. General -- Any person whose duty it is to list any freehold interest in subsurface natural resources for the purpose of appraisal shall forfeit not less than $25.00 nor more than $100.00 if he shall:

A. Refuse to furnish a proper list,

B. Refuse to list within the time required by law and within thirty (30) days after written demand therefore,

C. Refuse to answer any question asked by the assessor or the tax commissioner,

D. Answer falsely any question asked by the assessor or the tax commissioner, or

E. Refuse to deliver any other statement required by law: Provided,

that in addition to the foregoing penalties, if such person fails to return a true list of all interests in nautral resources which should be appraised, he shall forfeit one percent (1%) of the value of the interests not returned or otherwise taxed in this state.

25.02. Apportionment of Funds Collected. -- The sheriff shall apportion among all taxing units entitled to the funds all funds collected: Provided, such apportionment shall be in proportion to the rates of taxation for each such levying unit for this year in which the judgment was obtained bears to the sum of the rates of all.

25.03. Lien Preference. -- A judgment recovered under W. Va. Code § 11-1A-25 shall be a lein in preference to any other lein, from the time of service of notice, and it shall be a lien upon all real estate and personal property of the defaulting taxpayer, regardless of when acquired.

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SECRETARY OF STATE

EMERGENCY LEGISLATIVE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series IA
(1984)
Filed: October 4, 1984

Subject: Listing of interests in natural resources for purposes of the first statewide reappraisal as as required by W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-26.

State Tax Department
Leg. Reg. 11-1A
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STATEMENT OF EMERGENCY

Whereas, W. Va. Code § 11-1A-4 (1983) requires that every person who owns property situated in this State on July 1, 1983, shall on or before December 1, 1983, prepare a return itemizing and describing such property, whether real or personal, and file such return with the assessor of the assessment district wherein such property was located, except those returns listing property of the public service commission businesses shall be filed with the State Tax Commissioner.

Whereas, W. Va. Code § 11-1A-4 (1983) requires that the form for this special one-time return be designed by the Tax Commissioner, and shall provide means for the orderly listing of all property not excepted from listing under the provisions of W. Va. Code 11-1A-4 (1983).

Whereas, W. Va. Code § 11-1A-4 (1983) requires that a similar return, itemizing and listing such property, be also made, at the same time, by every person holding, possessing or controlling real and personal property (tangible and intangible) as executor, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker or in any representative or fiduciary capacity.

Whereas, even though W. Va. Code § 11-1A-5 excepts from listing real property assessed and listed upon the land books of the county assessor for 1983 or 1984 taxes, it is not known whether all real property has been so assessed and listed.

Whereas, there is no statutory requirement that there be recorded all leases entered into for the purposes of exploration, development, exploitation or removal from the surface or from below the surface of the ground coal, oil and gas, minor minerals or other natural resources.

Whereas, W. Va. Code § 11-1A-8 (1983) requires that the property required to be described and listed pursuant to W. Va. Code § 11-1A-4 (1983) and the real property entered on land books for the 1983 and 1984 tax years, be categorized and systematically inventoried for the express purpose of ascertaining what the previously assessed value for each item was or would have been as of July 1, 1983, such being done in accordance with guidelines, standards and procedures specified by the Tax Commissioner and entered into a statewide data bank established by the Tax Commissioner for such purposes.

Whereas the Tax Commissioner has entered into a contract with a private concern for the purpose of designing and developing the statewide data processing system network with such network forecast to be operational by on or before October 15, 1984.

Whereas, W. Va. Code § 11-1A-23 (1983) specifies that property tax returns and return information filed or supplied pursuant to articles 1A, 3, 4, 5, or 6, Chapter 11 of the West Virginia Code, "shall be confidential and except as authorized by this section, no officer or employee of the state tax department, county assessors, county commissions and the board of public works shall disclose any return or return information obtained by him ... in any matter in connection with his service as such an officer, member or employee...", excepted from this confidentiality provision is the itemized description of property listed pursuant to W. Va. Code §§ 11-1A-4, 11-1A-6 and 11-1A-26. This exception is to allow any person to ascertain that all property subject to assessment has been subject to appraisal during the first statewide reappraisal.

Whereas, W. Va. Code §§ 11-3-10 and 11-1A-26 provide penalties for refusal to answer or to falsely answer any question asked by the Tax Commissioner when such question or questions relate to the listing of real estate for the purpose of taxation.

Whereas, it is imperative that in order for the statewide reappraisal to be complete, the Tax Commissioner must ask questions to assure that all natural rescurces, including leases to provide for the extraction of same, be listed on the return to be filed.

Whereas, the return form upon which is to be listed the interest owned or leased in natural resources is to be sent on or before October 15, 1984, to all propsective taxpayers by the Tax Commissioner and the return is to be returned directly to the Tax Commissioner on or before December 15, 1984.

Whereas, the Tax Commissioner determined that an emergency exists requiring immediate promulgation of legislative re ulations pertaining to the appraisal listing return in order to comply with the time limitations prescribed by W. Va. Code § 11-1A-4, and to prevent substantial harm to the public interest.

Wherefore, the Tax Commissioner determined that it was and is in the best interest of persons owning, holding, possessing or controlling interests in real property and the natural resources located therein and of this State for the following emergency regulations to be filed in the State Register, in order that the provisions thereof become effective immediately upon filing, as provided in W. Va. Code 29A-3-15, so that the Tax Commissioner may promulgate regulations on: property to be listed upon the appraisal return; to whom and by when the return is to be sent, and to whom and by when the return is to be returned; confidentiality of appraisal returns and the safekeeping measures to be utilized in protesting that confidentiality; application of the forfeiture penalty and other penalties provided by law for failing to file an appraisal return or for failure to file a complete appraisal return; and on other problems identified in this Statement of Emergency, in order to preserve and protect the integrity of the statewide reappraisal and the public's confidence therein which are essential to obtaining equal and uniform appraisal of the natural resources located in or under the real property in this State.

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
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Filed: October 4, 1984

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1.03 Authority. -- These emergency legislative regulations are issued under the authority of W. Va. Code §§ 11-1A-1(f) and 29A-3-15.

1.04 Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on October 4, 1984.

1.05 Effective Date. -- These emergency legislative regulations take effect immediately upon their filing in the State Register, and are effective for a period of 180 days thereafter. Their life my be extended for a period of an additional 180 days upon compliance with the provisions of W. Va. Code § 29A-3-15.

1.06 Citation. -- These emergency legislative regulations may be cited as: W. Va. Emeg. Leg. Reg 11-1A, Series IA, § _____, page _____ (1984).

Section 4. Identification of Property to be Appraised; Persons Required to Make Returns.

4.01 General. -- The form designed or designated and provided by the Tax Commissioner shall be utilized for the orderly listing of all freehold interests in subsurface natural resources in West Virginia for the purpose of the first statewide reappraisal.

4.02 Definitions. -- For the purpose of article 1A, chapter 11 of the West Virginia Code, the following terms shall have the meaning ascribed herein unless the context in which the term is used clearly requires another meaning.

A. "Person" means and includes individuals as well as corporations, societies, associations and partnerships. See W. Va. Code § 2-2-10(i) (1973) defining generally terms used in the West Virginia Code.

B. "Subsurface natural resources" means both known deposits of coal, oil, natural gas and minor minerals located below the surface of the earth and those deposits for which mining and/or drilling permits have been obtained.

C. "Tax Commissioner" is the State Tax Commissioner of West Virginia and the mailing address for the Tax Commissioner's office is P.O. Box 2389 Charleston, WV 25328.

4.03 Due Date of Return. -- On or before October 15, 1984, the Tax Commissioner shall mail to all prospective taxpayers the tax return to be utilized for the listing of freehold interests in all real property having subsurface natural resources. Every person who on July 1, 1983, owned, held, possessed or controlled a freehold interest in real property containing subsurface natural resources shall prepare and file on or before December 15, 1984, the return itemizing and describing such property. If required by the Tax Commissioner, a supplemental appraisal return shall be filed within thirty days after written demand therefore is mailed, postage prepaid to the last known address of the person who owned, held, possessed or controlled a freehold interest in the above stated property. All returns required by this section to be filed shall be filed directly with the Tax Commissioner.

4.04 Persons Required to File Return.

A. The return required is a written list of questions which the Tax Commissioner may ask of taxpayers under the authority of W. Va. Code § 11-3-10 (1983) and which is described in the foregoing section 4.03 shall be filed by every person who on July 1, 1984, owned a freehold interest in subsurface natural resources, such persons among other means being determined as those who as of July 1, 1983, had applied for or had been granted mining and/or drilling permits through the Department of Natural Resources or the Department of Mines. Additionally, the return shall be filed by every person who held, possessed or controlled a freehold interest in subsurface natural resources on July 1, 1983, as:

1. executor;
2. administrator;
3. guardian;
4. trustee;
5. receiver;
6. agent;

7. partner;

8. attorney;

9. president or accounting officer of a corporation;

10. consignee;

11. broker; or

12. any other person who holds, possesses or controls such an interest in any representative or fiduciary capacity.

B. The return required by the Tax Commissioner under the authority of W. Va. Code § 11-3-10 (1983) and described in the foregoing section 4.03 shall be made and the information furnished:

1. With respect to an individual who is deceased, by his or her executor, administrator or other person charged with the property of such decedent;

2. With respect to a person under a disability who is unable to make a return, by a duly authorized agent, committee, guardian, fiduciary or other person charged with the care of the person or property of such individual:

Provided, that this subdivision shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of such an individual;

3. With respect to a case where a receiver, trustee in bankruptcy, or assignee by order of a court of competent jurisdiction, by operation of law or otherwise in possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return for such corporation in the same manner and form as corporations are required to make such returns;

4. With respect to property of an estate or a trust, the return shall be made by the fiduciary thereof; and

5. With respect to property of a married person who is absent from the State, the return shall be made by his or her spouse.

Section 25. -- Failure To List Property, Etc.; Collection of Penalties and Forfeitures

25.01. General -- Any person whose duty it is to list any freehold interest in subsurface natural resources for the purpose of appraisal shall forfeit not less than $25.00 nor more than $100.00 if he shall:

A. Refuse to furnish a proper list,

B. Refuse to list within the time required by law and within thirty (30) days after written demand therefore,

C. Refuse to answer any question asked by the assessor or the tax commissioner,

D. Answer falsely any question asked by the assessor or the tax commissioner, or

E. Refuse to deliver any other statement required by law: Provided,

that in addition to the foregoing penalties, if such person fails to return a true list of all interests in nautral resources which should be appraised, he shall forfeit one percent (1%) of the value of the interests not returned or otherwise taxed in this state.